

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1024 and 1025 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

BHUPATBHAI JANUBHAI NAYAK

Appearance:

Mr V M Pancholi, AGP for the State

Mr R N Shah for the respondents

CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE D.P.BUCH

Date of decision: 11/07/2000

ORAL COMMON JUDGMENT (Per Kadri, J.)

By way of filing these First Appeal under Section
54 of the Land Acquisition Act, 1894 (for short 'the

Act') read with Section 96 of the Code of Civil Procedure, 1908, the appellants have challenged the common judgment and award passed by the learned Civil Judge (S.D.), Godhra, District Panchmahals dated 13.4.1999 in Land Acquisition Reference No.389 and 390 of 1994 by which the Reference Court awarded additional compensation at Rs.11.75 paise for the acquired lands of the appellants situated at Village Gariyal, Taluka Halol, District Panchmahals. As common questions of facts and law are involved in this group of First Appeals, we propose to dispose them of by this common judgment.

2. The Executive Engineer, Dev Canal Irrigation Scheme sent proposal for acquisition of the agricultural land situated at village Gariyal, Taluka Halol for public purpose of Dev Canal Irrigation Scheme. The said proposal was scrutinized by the State Government and notification to acquire lands of the appellants came to be issued under Section 4(1) of the Act which came to be published in the Government Gazette on 2.6.1988. After following the usual procedure under the Act, the Land Acquisition Officer made his award No.31/88 on May 27, 1988 and offered compensation at the rate of Rs.1.75 paise per sq. metre for the acquired lands. The respondents, feeling aggrieved by the awards made by the Land Acquisition Officer, filed application under Section 18 of the Act requiring the Land Acquisition Officer to refer their applications to the District Court, Panchmahals at Godhra for determination of the market value of the acquired lands. Accordingly the said applications were referred to the District Court which came to be numbered as LAR Cases numbers as mentioned above. The Reference Court placing reliance on the previous award granted in LAR No.118/92 and other allied matters, determined the market value of the acquired lands which were the subject matter of the notification dated 15.10.1987 at the rate of Rs. 11.75 paise which has been challenged by the appellants in this group of First Appeal.

3. Learned Advocates for the appellants and the respondents have taken us to the entire Records and Proceedings of the Reference Court. Having heard the learned Advocates for the parties, we are of the opinion that the Reference Court has not committed any error in placing reliance on the previous award rendered in LAR No.118/92 wherein the market value of the acquired lands of the same village was determined at Rs.10.81 as on January 7, 1982. The Reference Court had given rise in price at 5% per annum for the determination of market value of the previous acquired lands in the year 1982 and

awarded Rs.11.75 paise per sq. metre to the claimants which, in our view is fair and reasonable compensation. Previous award - Exh.18 rendered in LAR No.118/92 was challenged in the High Court and the High Court dismissed the appeals and the certified copy of the judgment of the High Court was produced at Exh.19. The appellants had challenged the judgment of the High Court in the Supreme Court by filing SLP, which also came to be dismissed and copy of the order of the Supreme Court was produced at Exh.20.

4. Claimants' witness Bhupatbhai Janubhai Nayak who is also a claimant in LAR No.390/94 deposed on oath at Exh.21 that the claimants were getting income of Rs.5000/- per vigha out of sale of agricultural produce from the acquired lands. The acquired lands situate only 8 KMs. from Halol Town. That the village Gariyal was having facilities of school, electricity, bus stand etc. He further deposed that the acquired lands of previous award Exh.18 was in all respects relevant and comparable with the present acquired land. The Reference Court by placing reliance on previous award Exh.18, determined the market value of the present acquired land at the rate of Rs.12.50 per sq. metre which is challenged by the appellants by filing these appeals. Learned Advocate for the appellants has produced relevant documents, copy of the evidence of the witness examined by the claimants. We have gone through the relevant documents and copy of the documents placed by the appellants and the respondents. The claimants have led sufficient evidence to prove that the acquired lands of previous award Exh.18 were in all respects relevant and comparable for the determining of the market value of the present acquired lands. The market value of the acquired lands of previous award Exh.18 were confirmed upto the stage of Supreme Court. The acquired lands of previous award Exh.18 were situated in the same village Gariyal wherein notification was issued in the year 1982. The Reference Court had given rise of 30% because of the gap of five years between the date of the notifications of present acquired lands and the lands of previous award Exh.18. We do not find that any error was committed by the Reference Court by giving rise of 30% i.e. at the rate of 5% per year on the market value of the acquired lands of same village in the year 1982. The Reference Court had incidentally referred to the award passed in LAR No.238/88 of the acquired lands of the same village where notification under section 4(1) was published in the year 1984 and the Reference Court had determined the market value of the acquired lands which was the subject matter of LAR No.238/88 at the rate of Rs.11.75 paise per sq.

metre. The Reference Court deduced that even if 15% increase is given to the determination of market value of the acquired lands in the year 1984, then also the market value of the present acquired land as on 2.6.1988 would be Rs.14.00 paise per sq. metre. In the ultimate analysis, the Reference Court determined the market value of the present acquired lands at the rate of Rs.14.00 paise per sq. metre which in our view cannot be called excessive. We may add here that on the contrary the Reference Court awarded just, adequate and reasonable compensation in favour of the claimants for the acquired lands. We, therefore, confirm the determination of the market value of the acquired lands at the rate of Rs. 14.00 paise per sq. metres as on 2.6.1988. The statutory benefits extended in favour of the claimants also in our view, is just and proper and do not call for interference by this Court.

5. As a result of the foregoing discussion, these appeals are dismissed. The market value of the present acquired lands situated in village Gariyal is determined at the rate of Rs.14.00 per sq. metre as on 2.6.1988. The claimants shall be entitled to statutory benefits under section 23(1-A) and 23(2) and interest under section 28 of the Act. However, it is clarified that the claimants shall not be entitled to solatium on the additional amount payable under Section 23(1-A) and no interest shall be paid on the amount of solatium as per the decision of the Supreme Court in the case of Prem Nath Kapur v. National Fertilizers Corporation of India (1998(2) SCC 71). In the facts and circumstances of the case, there shall be no order as to costs.

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msp.